HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

LPA No.: 24 of 2006
Reserved on: 16.7.2007.
Decided on: 24.7.2007

State Bank of India and others .....Appellants.

Versus

Shri B.D. Mandhotra .....Respondent.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? Yes.

For the appellants: Mr.K.D. Sood, Advocate.
For the respondent: Mr.Ajay Mohan Goel, Advocate.

Per V.K. Ahuja, J:

This judgment shall dispose of the LPA filed against the judgment of learned Single Judge, dated 14.11.2006, passed in CWP No.46 of 2000.

Brief facts of the case are that the respondent was employed as Deputy Manager with appellant No.1. He was posted as Branch Manager at Sera Branch from July 1994 to July 1996. During this period, he was alleged to have committed a number of acts of misconduct for which his explanation was called,

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[1]. Whether reporters of Local papers may be allowed to see the judgment? Yes.

which was not found to be satisfactory. Hence he was charge sheeted. The charges as against the respondent were as under:

> **"Charge No.I**
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> You violated Bank's laid down instructions in regard to sanction of loan to your relative, self and others.
>
> **Charge No.II**
>
> You misutilised your official position in granting advance to certain borrower, in excess of your discretionary power. You also did not report the irregularity to your Controlling Authority.
>
> **Charge No.III**
>
> You committed various acts of omission and commission while handling certain transactions, thereby tarnishing Bank's image."

Respondent filed reply to the charges and thereafter a regular inquiry was conducted. On inquiry, the enquiry authority found that charges No.I and III stood fully proved while charge No.II held to be partly proved. Copy of the inquiry report was supplied to the respondent who was asked to make his representation, if any, against the report. The respondent submitted his representation. The disciplinary authority, vide its order dated 26.3.1999 (Annexure P-K), passed an order for removal of respondent from service. The respondent filed an appeal against the said order which was dismissed by the appellate authority, vide its order dated 17.1.2000 (Annexure P-M).

The orders of the disciplinary authority and the appellate authority were assailed by the respondent on the grounds, namely, that the orders are illegal, arbitrary, unjustifiable and violative of Articles 14 and 16 of the Constitution of India, that the penalty is harsh and excessive, that the inquiry was not conducted in accordance with the rules and the findings of the enquiry authority

are not supported by evidence but are based upon surmises, conjectures and extraneous material. It was also contended that the appellate authority had not considered the submissions made by the respondent and the appeal was dismissed in a mechanical manner. The plea was also taken that no show cause notice of proposed penalty was issued before passing the order of removal from service.

The appellants in their reply denied the allegations and pleaded that the inquiry was conducted in accordance with the rules and the findings are supported by evidence. The plea taken before the learned Single Judge was that the charges proved against the respondent were only of minor lapses and these do not make out a case for imposition of major penalty for removal from service.

Briefly stated the charges as against the respondent were charge No.I that he granted loan of Rs.6500/- in favour of his mother without clearance from the controlling authority. The second allegation included in charge-I was regarding enhancement of his own limit from Rs.69,300/- to Rs.76,500/- without obtaining administrative clearance from the controlling authority. The third charge forming part of charge-I was that one borrower named Mohinder Singh, who had taken loan for a motor vehicle, had not been regular in repayment of the loan and in spite of that, the respondent loaned him another sum of Rs.7,957/- for the repair of the said vehicle and the borrower himself was allowed to encash that cheque.

The charge-II consisted of only one allegation i.e. allowing one holder of current account to over-draw in excess of the sanctioned limit. The sanctioned limit in respect of each of the two accounts was Rs.3,60,000/-. The respondent allowed him to d raw upto Rs.4,01,600/- in one account and Rs.4,20,000/- in

another account and this over-drawal, which was irregular, was not reported to the controlling authority.

Charge-III consisted of four allegations; firstly that two bankers cheques for Rs.1200/- and Rs.1460/- were issued by debiting account in the name of one Subhash Chand and the account holder was paid the cash against the cheques while the purpose of the debit was indicated as interest recovery. The second allegation of charge-III was that a sum of Rs.252/- was required to be refunded to one account holder by way of giving him credit in the aforesaid account but the money was shown to have been paid in cash and the borrower denied having received the said amount of money. The third allegation included in charge-III was that a sum of Rs.304/- had been shown to have been refunded in cash to the holder of Account Nos.94 and 91 instead of being credited into their aforesaid accounts and the account holder had denied the receipt of payment. The fourth allegation in charge-III was that one person had deposited in his fixed term a sum of Rs.1.00 lac against STDR and, a sum of Rs.1,02,600/- was credited to his saving bank account before maturity and Rs.415/- shown to have been paid in cash, but the said person denied having received any money in cash.

The submissions made by the learned counsel for the appellants were on the ground that the learned Single Judge had clearly held that some of the charges stood proved as against the respondent, but the learned Single Judge wrongly held that these charges are not so serious so as to entail the extreme penalty of removal from service. It was submitted that the court could not have substituted itself in place of the enquiry officer or the appellate authority and the court was not sitting in appeal and the only consideration was as to whether the

penalty imposed was so harsh as to shock the conscience of the court and, therefore, the penalty imposed was not in accordance with law. It was submitted that in the case of banks where the confidence of the public is reposed in the bank authority with whom the money is deposited, no case of irregularity can be condoned and, therefore, the extreme penalty imposed of removal from service cannot be said to be harsh keeping in view the charges which were proved.

On the other hand, the findings of the learned Single Judge holding that these charges stood proved were not disputed by the learned counsel for the respondent and the only dispute was in regard to the penalty imposed by the appellate authority which was harsh and, therefore, it was submitted that the order of the learned Single Judge directing the disciplinary authority to reconsider the issue of imposition of penalty does not call for an interference by this Court.

To substantiate his submission, the learned counsel for the appellants had relied upon the following decisions to show that in so far as employees of the bank or officers of the bank are concerned, the view of the Apex Court has to be considered and the law laid down in the following cases can be said to be relevant for the present discussion.

Reliance was placed upon the decision in **State of Orissa and others v. Bidyabhushan Mohapatra, AIR 1963 Supreme Court 779**, wherein it was observed that if the High Court is satisfied that if some but not all of the findings of the Tribunal were unassailable, the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment were placed, was final and the High Court had no jurisdiction to direct the

Governor to review the penalty. It was held that the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. It is not for the court to consider whether the ground as to substantial misdemeanour for which the punishment can lawfully be imposed would have weighed with the authority in dismissing the public servant. The court has no jurisdiction if the findings of the enquiry officer or the Tribunal, prima facie, make out a case of misdemeanour to direct the authority to reconsider that order because in respect of some of the findings but not all, it appears that there had been violation of the rules of natural justice. The High Court, therefore, erred in directing the Governor to reconsider the question and the order of the High Court was set aside.

The facts of the above case were that the respondent was a permanent non-gazetted employee of the State of Orissa in the Registration Department and was posted as Sub Registrar. The charges against him were in regard to receiving illegal gratification and was that he was possessed of property disproportionate to his income. The Tribunal held that there was reliable evidence to support four out of five heads in the first charge of corruption and also the charge relating to possession of means disproportionate to the income and recommended that the respondent be dismissed from service. The findings of the Tribunal were tentatively approved by the Governor of Orissa and the respondent was given a show cause notice as to why he should not be dismissed from service, as recommended. The Governor finally held that the respondent be dismissed from service and respondent filed the writ petition before the High Court who held that since some of the charges were not proved, the Governor

should decide as to whether the punishment of dismissal should be maintained or else whether a lesser punishment would suffice.

The decision in **Ganesh Santa Ram Sirur v. State Bank of India and another, (2005) 1 Supreme Court Cases 13**, was relied upon by the learned counsel for the appellant. In that case, the employee involved was the Branch Manager of a Bank, who was initially recruited as a clerk. There were total seven charges imputed against him. The enquiry officer dropped one charge out of seven charges and out of the remaining six charges, five charges had been proved. The enquiry officer held that only charge 5, pertaining to grant of advance by the appellant to his wife, was proved. This report did not contain any recommendation regarding punishment. This report was sent to the official who was asked to make his representation. The disciplinary authority recommended to the appointing authority the punishment of reduction in substantive salary at one stage from Rs.4020 to Rs.3900. The punishing authority imposed the punishment accordingly. The employee preferred an appeal before the appellate authority and took the plea that the punishment imposed upon him was too severe and in the facts of the case only one charge, out of seven, was proved. The appellate authority, however, proposed to enhance the penalty imposed to an order of dismissal. The employee was given a chance to file his reply against the proposed penalty of dismissal, which was ultimately passed by the appellate authority. Their Lordships had referred to the case law in detail and the observations made in para 34 are relevant and are being reproduced below:

> "34. The bank manager/officer and employees of any bank, nationalized/or non-natioinalised, are expected to act and discharge their functions in accordance with the rules and regulations of the bank. Acting beyond one's authority is by itself a breach of discipline and trust

and a misconduct. In the instant case Charge 5 framed against the appellant is very serious and grave in nature. We have already extracted the relevant Rule which prohibits the bank manager to sanction a loan to his wife or his relative or to any partner. While sanctioning the loan the appellant did not appear to have kept this aspect in mind and acted illegally and sanctioned the loan. He realized the mistake later and tried to salvage the same by not encashing the draft issued in the maiden name of his wife though the draft was issued but not encashed. The decision to sanction a loan is not an honest decision. Rule 34(3)(1) is a rule of integrity and, therefore, as rightly pointed out by Mr.Salve, the respondent Bank cannot afford to have the appellant as bank manager. The punishment of removal awarded by the appellate authority is just and proper in the facts and circumstance of the case. Before concluding, we may usefully rely on the judgment Regional Manager, U.P. SRTC v. Hoti Lal wherein this Court has held as under: (SCC p.614, para 10)

> "If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."

The appeal filed by the appellant was dismissed, but, however, it was held by their Lordships that the appellant will be entitled to full pension and gratuity irrespective of his total period of service.

The decision in **State Bank of India and others v. Ramesh Dinkar Punde, (2006) 7 Supreme Court Cases 212**, shows that the Apex Court had considered at length the cases of the bank employees and had referred to various cases of bank employees and the findings recorded therein. The observations made in paras 19, 20 and 21, by referring to the earlier decisions, are relevant and are being reproduced below:

> "19. In Regional Manager, U.P. SRTC v. Hoti Lal, it was pointed out as under: (SCC p. 614, para 10)

> "If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable."

20. In Cholan Roadways Ltd. v. G.Thirugnanasambandam this Court at SCC p. 247, para 15 held:

> "15. It is now a well-settled principle of law that the principles of the Evidence Act have no application in a domestic enquiry."

21. Confronted with the facts and the position of law, learned counsel for the respondent submitted that leniency may be shown to the respondent having regard to long years of service rendered by the respondent to the Bank. We are unable to countenance such submission. As already said, the respondent being a bank officer holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. The respondent was a Manager of the Bank and it needs to be emphasized that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired. It is for this reason that when a bank officer commits misconduct, as in the present case, for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently."

Accordingly, the appeal preferred by the Bank was allowed and the judgment of the High Court was set aside while that of the disciplinary authority and that of the appellate authority were restored.

The brief facts of that case were that there were findings of the enquiry officer that the charged officer had filled in the account opening form of one person and the charged officer was the Manager of the Bank. There was no occasion to him to fill in the application form. The account opening form was filled in the hand writing of the charged officer and the charged officer did exert pressure on the Branch Officer to accept the trust funds as term deposits and issue TDRs and grant over-drafts against the TDRs. These charges had been

accepted by the disciplinary authority and the appellate authority and it was held that the High Court has erred in law and on facts in interfering with the findings of the enquiry officer, the disciplinary authority and the appellate authority by acting as a court of appeal and re-appreciating the evidence. The High Court had held that the imposition of penalty of removal inflicted upon the respondent is set aside with a direction to the appellant to reinstate the respondent with all consequential benefits including that of back wages to be paid within a period of 3 months.

On the other hand, the learned counsel for the respondent had relied upon the following two decisions.

The decision in **Damoh Panna Sagar Rural Regional Bank and another v. Munna Lal Jain, (2005) 10 Supreme Court Cases 84,** shows that in that case there was unauthorized withdrawal of money from the Bank by Bank Manager, who subsequently deposited the said amount with interest in the Bank. The fact that there was no loss to the Bank was held to be no defence and it was held that the higher standard of honesty and integrity, devotion and diligence is expected from him. Acting beyond ones authority is itself breach of discipline and misconduct. The observations made in regard to the bank officer and the standard of honesty and integrity required as made in para 17 of the judgment are relevant and are being reproduced below:

> "A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. It is no defence to say that no loss or profit resulted in the case when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon

> each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

It was also held in the above judgment that the court's interference with the punishment is called for only when it is so disproportionate as to shock the judicial conscience. It was also observed that while holding that the punishment awarded by disciplinary authority was shockingly disproportionate to the gravity of misconduct, it must record reasons therefore. The court's interference is limited to deficiency in decision making process and not the decision. It was also observed that the court should not interfere with the administrator's decision unless it is illogical or suffer from procedural impropriety or is shocking to the conscious of the court in the sense that it is in defiance of logic or moral standards.

The facts of the above case were that the employee was working as a Branch Manager and the charges were that he had withdrawn a sum of Rs.25,000/- for his personal use. After inquiry, the disciplinary authority concurred with the findings of the enquiry officer holding him guilty and passed order of removal after issuance of show cause notice. In appeal, the said order of removal was maintained. In the writ petition preferred by the employee, the learned Single Judge held that the charges have been duly brought home, who remitted the matter to the appellate authority for reconsideration with regard to quantum of punishment. Thereafter, it was held by the Board that the order of removal did not require reconsideration. The employee again filed writ petition. The learned Single Judge held that the Board did not consider the matter from all angles keeping in view the observations made in the earlier order and

direction was given to the Board to reconsider the penalty of removal. The Board again reconsidered the matter and refused to interfere with the quantum of punishment. The learned Single Judge declined to interfere with the order and in LPA before Division Bench, it was submitted that the employee had withdrawn the amount because of emergency and had deposited the amount with interest and observing that no loss was caused to the Bank, it was held that it was a fit case where the Board should be compassionate and gracious enough to reconsider the employee's case to pass any punishment other than dismissal, removal or termination. The order of the High Court was set aside by the Apex Court.

The decision in **Kailash Nath Gupta v. Enquiry Officer (R.K. Rai) Allahabad Bank and others, (2003) 9 Supreme Court Cases 480,** shows that their Lordships had dealt with the courts' power to interfere with quantum of punishment in regard to a Bank Manager. The appellant was an officer in the Bank and disciplinary proceedings were initiated against him on account of certain alleged irregularities. He was found guilty of the charges and ultimately the disciplinary authority ordered his removal from service. He also failed in appeal filed before the appellate authority and then filed a writ petition in the High Court challenging the order of his removal from service. The High Court relied upon a decision of the Apex Court in State Bank of India v. Samarendra Kishore Endow and was of the view that imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority and it refused to interfere with the order passed by the Administrative Tribunal. The appellant had challenged the validity and correctness of the order passed by the High Court. It was observed that is has not been considered by the High Court that

there was procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service and the matter was remitted to the High Court to consider the limited question of punishment only.

On a careful perusal of the decisions of the Apex Court, it is clear that when the case pertains to a bank employee and the financial irregularities committed by him, these cannot be taken to be lightly since the confidence of the public is involved, who deposit their money with the bank and in most of the cases, the view of the Apex Court appears to be that such persons cannot be retained in service. Even in the case of Ganesh Santa Ram Sirur (supra), the Apex Court has gone to the extent that even when one of the charge was proved, no financial loss had been caused to the bank, the order of dismissal was upheld.

Coming to the facts of the present case, the learned Single Judge had observed that the charges, as against the respondent, were not so serious so as to entail the extreme penalty of removal from service. However, this fact cannot be lost sight of that number of irregularities have been committed by the respondent and such a person cannot be given another chance to commit the irregularity while dealing with public money lying in deposit with the Bank. Therefore, such a person does not deserve to be retained in service and, therefore, the order of dismissal from service is liable to be upheld and the Bank cannot be directed in the case of a person who has committed financial irregularities to reconsider his case for imposition of another penalty. However, keeping in view the fact that no financial loss has been caused to the Bank and keeping in view the decision of the Apex Court in Ganesh Santa Ram Sirur (supra), we are of the opinion that the respondent should be entitled to full

pension and gratuity irrespective of his total period of service, as granted by the Apex Court in this case.

In view of the above discussion, the order passed by the learned Single Judge is set aside directing the disciplinary authority to reconsider the issue of imposition of penalty upon the respondent. However, the fact that the appellant has been dismissed from service shall not come in his way in the matter of payment of pension and gratuity, if otherwise payable and admissible to him. The order passed by the learned Single Judge is amended to this effect as stated above. The LPA filed by the appellant is accordingly accepted. There is no order as to costs.

CMP No. 752 of 2006:

In view of the disposal of the main appeal, the interim order dated 27.12.2006 shall stand vacated and the application is disposed of.

(Deepak Gupta), J.

(V.K. Ahuja), J.

July 24, 2007 (trs)